

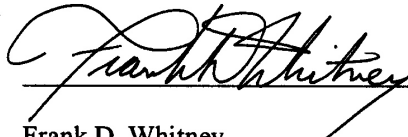
<sup>1</sup> One of the named Defendants, Javier Garcia, has not answered, responded, or otherwise made an appearance in this matter, despite apparently being served on October 8, 2010. (Doc. No. 4-1). Because more than thirty days has passed since Defendant Garcia was served with process, it is immaterial whether he would have joined in Defendants' Notice of Removal as his period to remove under 28 U.S.C. § 1446(b) has expired. Barbour v. Int'l Underwriters, 594 F.3d 315, 326 (4th Cir. 2010). Defendant Garcia's failure to respond may be viewed as a violation of the rule of unanimity. Ogletree v. Barnes, 851 F. Supp. 184, 189-90 (E.D. Pa. 1994). Thus, while the Court may not raise a procedural defect in the removal process, such as a violation of the unanimity requirement, *sua sponte*, see, e.g., Loftis v. United Parcel Serv., Inc., 342 F.3d 509, 516-17 (6th Cir. 2003), the Court notes Defendant Garcia's failure to respond, if raised by Plaintiff, would have provided additional grounds for remand. *Id.*

Defendants noticed their removal on November 23, 2010, citing federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343 as their basis for removal. Defendants, however, were served between October 8, 2010 and October 12, 2010, more than thirty days prior to filing the Notice of Removal in this Court. (Doc. No. 4-1, 4-2, 4-3, 4-4, 4-5). Accordingly, Defendants' removal was procedurally deficient, and remand is proper. See 28 U.S.C. § 1447(c) (permitting remand for non-jurisdictional defects in removal when a motion to remand is filed within thirty (30) days of the notice of removal); 14C Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure, § 3739 (4th ed. 2009).

IT IS THEREFORE ORDERED that Plaintiff's Motion to Remand to State Court (Doc. No. 5) is GRANTED.

IT IS SO ORDERED.

Signed: January 12, 2011

  
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Frank D. Whitney  
United States District Judge

